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09/774,962	01/31/2001	Jim McCollum	826	6020

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Law Offices of John D. Gugliotta, P.E., Esq.  
202 Delaware Building  
137 South Main Street  
Akron, OH 44308

EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/774,962

Applicant(s)

MCCOLLUM ET AL.

Examiner

Christopher Bottorff

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

The amendment filed July 11, 2003 has been entered. Claims 1-8 are pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipate by Fox US 3,934,895.

Fox discloses a wheeled, portable, collapsible athletic equipment carrier comprising a two wheeled cart and an athletic bag incorporating the cart. See Figure 1 and note wheels 24, bag 8, and collapsible handle 32. The bottom end of the athletic bag rests against a base member 12 of the cart such that a bag mounting platform is formed that serves as a base upon which a base of the bag is permanently attached. See column 1, line 65, through column 2, line 5.

Claims 1, 2, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Server Perez US 4,989,889.

Server Perez discloses a wheeled, portable, collapsible equipment carrier comprising a two wheeled cart and a bag 6 incorporating the cart. See Figures 1-4, and note the wheels mounted to frame member 9 and the collapsed configuration depicted

Art Unit: 3618

in figure 2. A main frame 2, 5, and 9 has an anterior end opposite a posterior end and includes a hollow, tubular base member 9 forming a U-shape that serves as a base upon which the bag can be supported. An elongated, hollow, tubular handle 1 and 4 formed of a U-shape is pivotally mounted at sleeve 3 to inside circumferential sidewalls 2 of the main frame at the anterior end. See Figures 1, 3, and 4. The bottom end of the athletic bag rests against a base member of the cart such that a bag mounting platform is formed that serves as a base upon which a base of the bag is permanently attached. Note in Figure 2 that the bag remains permanently attached even when the carrier is collapsed.

Also, identifying the carrier as being used for athletic purposes does not distinguish the invention over the prior art. It is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danley*, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device *is*, not what it *does*.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original). Moreover, a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all of the structural limitations of the claim *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Here, Server Perez teaches all of the structural limitations claimed and is capable of being used for athletic purposes.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen US 5,845,780.

Allen discloses a wheeled, portable, collapsible athletic equipment carrier 10 comprising a two wheeled cart (note the handle and wheel arrangement depicted in figures 1 and 3) and an athletic bag incorporating the cart. See figures 1-3. The bag has a generally vertically elongated configuration fabricated of a fabric that is heavy, flexible, and weatherproof. See column 2, lines 48-49.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Server Perez US 4,989,889 in view of Weldon US 6,386,557.

Server Perez does not disclose a support stand having an elongated, hollow, cylindrical U-shaped configuration affixed to lower external circumferential sidewalls of the base member. However, Weldon teaches the old and well known cart frame configuration having a main frame 10 with an anterior end opposite a posterior end, a hollow and tubular base member 16 forming a U-shape, and a support stand 17 with an elongated, hollow, cylindrical U-shaped configuration affixed to lower circumferential sidewalls of the U-shaped portion of the base member at corners. See Figures 1-3.

Art Unit: 3618

From the teachings of Weldon, forming the frame of Server Perez with a support stand that is elongated, hollow, cylindrical, U-shaped, and is affixed to lower circumferential sidewalls of the U-shaped portion of a hollow and tubular base member would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide a sturdy base of support for the bag.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Server Perez US 4,989,889 in view of Green US 5,951,075.

Server Perez does not disclose an inflating pump attached to the equipment carrier. However Green teaches that inflating pumps are old and well known pieces of equipment that are commonly carried with equipment carriers. See column 6, lines 24-26. From the teaching of Green, attaching a pump to the carrier of Server Perez would have been obvious to one of ordinary skill in the art at the time the invention was made in order to service other equipment attached to or carried by the carrier.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Green US 5,951,075.

Allen does not disclose an inflating pump attached to the equipment carrier. However Green teaches that inflating pumps are old and well known pieces of equipment that are commonly carried with equipment carriers. See column 6, lines 24-26. From the teaching of Green, attaching a pump to the carrier of Allen would have

been obvious to one of ordinary skill in the art at the time the invention was made in order to service other equipment attached to or carried by the carrier.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Server Perez US 4,989,889 in view of Inge US 6,494,468.

Server Perez also does not disclose ball-receiving cylinders attached to the front side of the bag. However, Inge teaches that the practice of attaching a ball-receiving cylinder 12 to the front side of a carrier was old and well known in the art at the time the invention was made. Also, the dimensions of the cylinder are suitable for accommodating softballs and/or baseballs 13. See Figure 1 and column 3, lines 24-29. Providing the bag of Server Perez with a ball-receiving cylinder would have been obvious to one of ordinary skill in the art at the time the invention was made in order to hold balls that are used with the athletic equipment in the bag.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Inge US 6,494,468.

Allan also does not disclose ball-receiving cylinders attached to the front side of the bag. However, Inge teaches that the practice of attaching a ball-receiving cylinder 12 to the front side of a carrier was old and well known in the art at the time the invention was made. Also, the dimensions of the cylinder are suitable for accommodating softballs and/or baseballs 13. See Figure 1 and column 3, lines 24-29. Providing the bag of Allan with a ball-receiving cylinder would have been obvious to one

Art Unit: 3618

of ordinary skill in the art at the time the invention was made in order to hold balls that are used with the athletic equipment in the bag.

### ***Response to Arguments***

Applicant's arguments filed July 11, 2003 have been fully considered but they are not persuasive.

In regard to Fox, Applicants assert that Fox does not incorporate an "athletic bag" or a "bag mounting platform." However, Fox explicitly discloses a bowling bag 8, which certainly qualifies as an athletic bag. Moreover, the bag is permanently attached to a bag mounting platform 12 via fasteners 16.

In regard to Server Perez, the bag is a shopping bag but is capable of being used for carrying athletic equipment. Although the bag of the present claimed invention is intended to be used with athletic equipment, this intended use is irrelevant for the purposes of patentability since the manner in which an apparatus is intended to be used does not distinguish the apparatus over the prior art. In addition, the further limitations cited by Applicants on lines 2-7 of page 5 of the remarks are disclosed by Server Perez, as stated in the above rejection, and anticipate the claimed invention under the broadest reasonable interpretation standard.

In regard to Allen, each and every element set forth in claims 1 and 6 are found, either expressly or inherently, in Allen. These elements are identified in the rejection above. There is no requirement that a reference specifically claim each and every



Art Unit: 3618

element set forth in the present claims, as Applicant suggests. Therefore, the present claims are anticipated by Allen.

In regard to Weldon, Applicants contend that Weldon does not teach an athletic bag and inflating pump. However, this is irrelevant since Weldon is not relied upon for such a teaching. Weldon is relied upon for teaching certain frame features, and obviates the claimed invention when combined with the apparatus of Server Perez.

The teaching of the inflating pump attached to a ball carrying apparatus is found in Green. See column 6, lines 24-26. Although Green also teaches additional components that are unrelated to the inflating pump, these components are not applicable to the above rejection. The teaching of the inflating pump directly relates to the limitations of claim 4, and when combined with the additional teachings of the prior art as outlined above, obviates the invention defined in claim 4. Other features of the present invention that are not defined in claim 4 are irrelevant to the cited combinations involving Green.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gramm and Utu et al. disclose athletic equipment carriers. Byron discloses a athletic equipment carrier including a ball receiving cylinder.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3618

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff



BRIAN L. JOHNSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3500

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